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10/036,157

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10/06/2004

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EXAMINER

CUNNINGHAM, GREGORY F

ART UNIT

PAPER NUMBER

2676

10

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/036,157

**Applicant(s)**

MATRASZEK ET AL.

**Examiner**

Greg Cunningham

**Art Unit**

2676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This action is responsive to amendment received 07/01/2004.
2. The disposition of the claims is as follows: claims 1-26 are pending in the application.  
Claims 1 and 13 are independent claims. Claims 13-26 are newly added.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. In independent claims 1 and 13 the omitted elements are:
  - a.) How or in what way affective information is related to a digital image or metadata; and
  - b.) what is the form of affective information: physiological, visual personal expression, verbal, written prose or word, or merely subjective mood.
5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are:
  - a.) what are the relationships and how is the related information conveyed.

(Examiner's note: simply using a handscanner for emailing updated snapshots once or twice a week as one respondent does in AT&T News Release sufficiently relates to the capture device since all of the information from the scanner originates from the scanner and therefore is

Art Unit: 2676

related thereof. Perhaps Applicant means additional information other than the scanned image itself.)

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1-4, 6-9, 12-16, 18-21, 24 and 25 are rejected under 35 U.S.C. 102(a) as being disclosed by AT&T News Release, Use technology to deliver Mother's Day greetings on May 11, hereinafter AT&T.

A. Claim 1, “An image file for storing a digital image and information related to a digital image, including

a) digital image data;  
b) a user identifier; and  
c) affective information which relates to the feelings or emotions of the user toward a digital image” is disclosed by AT&T.

Wherein [electronic greeting cards], [emailing photos], [I have a small handscanner and can send her updated snapshots once or twice a week] corresponds to “digital image data”; [mom], [mother], [I], and [grandchildren] correspond to “user identifier”; and [It makes her feel closer to the grandchildren] corresponds to “affective information which relates to the feelings or emotions of the user toward a digital image”, [It] corresponding to [electronic greeting cards] or [emailing photos].

Art Unit: 2676

B. Claim 2, “The image file of claim 1 wherein the affective information further specifies the time or period within a range of times that the classification was preformed [Mother’s Day]” is disclosed supra for claim 1 [as detailed].

C. Claim 3, “The image file of claim 1 wherein the affective information identifies the importance of the image [All of these innovations complement and enhance America's favorite Mother's Day tradition] is disclosed supra for claim 1 [as detailed]. Wherein [favorite] conveys the importance of Mother’s Day to American people.

(Examiner’s note: what and how does affective information identify the importance of the image, see 112 rejection supra.)

D. Claim 4, “The image file of claim 1 wherein the image file further includes information related to the capture device [handscanner]” is disclosed supra for claim 1 [as detailed].

E. Claim 6, “The image file of claim 1 wherein the digital image file includes affective information and user identifies for a plurality of users [Mother] or [I]” is disclosed supra for claim 1 [as detailed]. {Mother} and [I] corresponds to a plurality of users.

F. Claim 7, “A method for providing a retrieval scheme for stored digital images [photographs, drawings, and/or electronic greeting cards], using the image file of claim 6, comprising the steps of: a) a retrieval user providing a user identifier [Mother, mom, and/or I]; b) using the user identifier provided by the retrieval user to select, from the plurality of affective information [favorite Mother’s Day and/or intriguing website], the particular affective information associated with the retrieval user [Mother, mom, and/or I]; and c) using the affective information to facilitate image retrieval [your message is available whenever Mom chooses to retrieve it]” is disclosed supra for claim 6 and as [detailed].

G. Claim 8, “The method of claim 7 wherein the affective information identifies the importance of the image to a plurality of users [Mother, Mom, and/or I]” is disclosed supra for claim 7 and as [detailed].

H. Claim 9, “The method of claim 7 wherein the affective information [Mother’s Day] is used to determine the order of presentation of retrieved images [a Mother’s Day email message ... is available whenever Mom chooses to retrieve it]” is disclosed supra for claim 7 and as [detailed].

I. Claim 12, “The image file of claim 1 wherein the affective information [Mother’s Day greetings card] is provided by a user interface [Internet] which enables the user to indicate important images [photographs or drawings from grandchildren or lists of websites or email addresses of relatives or friends]” is disclosed supra for claim 1. Wherein [frequently reported email activity] corresponds to “user to indicate important images”.

J. Per independent claim 13, this is directed to an image file for performing the image file of independent claim 1, and therefore is rejected to independent claim 1. Wherein the name and/or salutation [Mom and/or Mother] corresponds to metadata and affective information.

K. Per dependent claims 14-16, 18-21, 24, these are directed to an image file for performing the image file of dependent claims 2-4, 6-9, and 12, and therefore are rejected to dependent claims 2-4, 6-9, and 12.

L. Claim 25, “The image file of claim 13 wherein the affective information is stored as personal tag data” is disclosed supra for claim 1. Wherein [Mother and/or Mom] corresponds to “personal tag data”

Art Unit: 2676

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over AT&T as applied to claim 1 above, and further in view of Pierce et al., (US Patent Number 6,327,580), hereafter Pierce.

A. Claim 5, "The image file of claim 1 wherein the image data is a JPEG compressed image data" is disclosed by AT&T supra for claim 1. However AT&T does not appear to disclose, "wherein the image data is a JPEG compressed image data", but Pierce does in col. 8, ln. 42 – col. 9, ln. 13 at [The graphic image data 207a is representative of the desired message and may be stored in any manner of well known formats, such as: PDF, JPEG, GIF and the like.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Mother's Day email greeting cards disclosed by AT&T in combination with [JPEG compressed image data], as disclosed supra by Pierce because it would improve system effectiveness as disclosed by Pierce in col. 3, lns. 54-56.

B. Per dependent claim 17, this is directed to an image file for performing the image file of dependent claim 5, and therefore is rejected to dependent claim 5.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over AT&T as applied to claim 1 above, and further in view of Oda et al., (US Patent Number US 6,088,040 A), hereafter Oda.

Art Unit: 2676

A. Claim 10, “The image file of claim 1 wherein the affective information is provided by monitoring the facial expression of the user” is disclosed by AT&T supra for claim 1. However AT&T does not appear to disclose, “wherein the affective information is provided by monitoring the facial expression of the user”, but Oda does in col. 4, ln. 42 – col. 5, ln. 7.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply affective information, image data and user identifier disclosed by AT&T in combination with facial image information disclosed by Oda, and motivated to combine the teachings because it would [carry out analysis and composition of a facial expression of a person in information transmission such as a teleconferencing system and the like] as revealed by Oda in col. 1, lines 19-21.

B. Per dependent claim 22, this is directed to an image file for performing the image file of dependent claim 10, and therefore is rejected to dependent claim 10.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over AT&T as applied to claim 1 above, and further in view of Abbott et al., (PGPUB-DOCUMENT-NUMBER: 20020054174), hereafter Abbott.

A. Claim 11, “The image file of claim 1 wherein the affective information is provided by monitoring the physiology of the user” is disclosed by AT&T supra for claim 1. However AT&T does not appear to disclose, “wherein the affective information is provided by monitoring the physiology of the user”, but Abbott does in [para. 0130 and 0133].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply affective information, image data and user identifier disclosed by



Art Unit: 2676

AT&T in combination with physiology data disclosed by Abbott, and motivated to combine the teachings because it would provide [attributes] as revealed by Abbott in [para. 0130].

B. Per dependent claim 13, this is directed to an image file for performing the image file of dependent claim 11, and therefore is rejected to dependent claim 11.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over AT&T as applied to claim 25 above, and further in view of Bensen et al., (PGPUB-DOCUMENT-NUMBER: US 20020042557 A1), hereafter Bensen.

A. Claim 26, "The image file of claim 25 wherein the personal affective tag is a numerical value" is disclosed by AT&T supra for claim 1. However AT&T does not appear to disclose, "wherein the personal affective tag is a numerical value", but Bensen does in [para. 0012].

Wherein [how a patient is numerically marked feeling] corresponds to "personal affective tag is a numerical value".

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply affective information, image data and user identifier disclosed by AT&T in combination with how a patient is numerically marked feeling as disclosed by Bensen, and motivated to combine the teachings because it would provide [a diagnostic tool which assists both the patient and their health care provider to better understand the treatment potential which may be available to the particular patient] as revealed by Bensen in [para. 0003].

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2676

***Responses***

14. Responses to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231. If applicant desires to fax a response, (703) 308-9051 may be used for formal communications or (703) 308-6606 for informal or draft communications.

Please label "PROPOSED" or "DRAFT" for informal facsimile communications. Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

***Inquiries***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Cunningham whose telephone number is (703) 308-6109.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella, can be reached on (703) 308-6829.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9306 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Art Unit: 2676

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

*J.F. Cunningham, Examiner*

gfc

October 1, 2004

*Matthew C. Bella*

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